

## REMARKS

In the specification: Amendments to the specification have been made to correct grammatical or typographical errors within the specification.

In the drawings: The enclosed sixteen sheets of drawings replace the originally filed drawings and have been discussed in the amendment to the drawings section of this submittal.

The claims: The Examiner allowed claims 42-53, 56-59 and 64-113 and indicated that claims 7, 15, 16, 20, 21, 27, 35, 36, 40 and 41 would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims. Claims 15, 16, 20, 21, 27, 35, 36, 40 and 41 have been rewritten into independent form including all of the limitations of the base claim and any intervening claims and therefore are considered allowable. Accordingly, these claims and all claims dependent thereon are believed to be in condition for allowance. Claims 8, 17, 19, 28, 37 and 39 also have been rewritten into independent form including all of the limitations of the base claim and any intervening claims and are believed to be allowable for the reasons provided below. Claim 42 has been amended to provide antecedent basis for "elongated member" and to delete text for clarification. Antecedent basis for "said fastener" also had been provided in the first line of claims 8, 15, 17, 20, 21 and 27, and a period added to claim 65 to correct obvious typographical/grammatical errors without changing the scope of the claims. The amendments to claims 8, 15, 17, 20, 21, 27, 42 and 65 are only to correct informalities or for clarification, and not necessary to distinguish over any prior art. Claims 1-3, 5-7, 10-12, 14, 22-23 and 25-26 have been cancelled without prejudice. No new matter is believed to be introduced by way of this amendment. The undersigned further notes that the status identifier in the previous amendment for claim 20 should have read "previously amended" and that for claim 22 should have read "currently amended" as is apparent from the claim markings.

### Claims 17-19 and 37-39

Claims 17-19 and 37-39 were rejected under 35 U.S.C. §102(b) as being anticipated by Bregan (US 5,304,204). Applicant respectfully requests reconsideration and withdrawal of this rejection.

Regarding claim 17, claim 17 describes “ a restraint mechanism for openly restraining and releasably retaining said fastener in said open configuration, wherein said restraint mechanism is a generally cylindrical tube.” Bregan on other hand discloses an applicator 200 which comprises a channel-shaped pusher member 202 and an elongated flat tongue 204 which are slidable relative to one another. Applicator 200 (not endoscopic tube 212) pivots the distal portions 58 of tines 54 into an open position (col. 6, lines 47-46). Endoscopic tube 212 is not a restraint mechanism for openly restraining and releasably retaining fastener 50 in an open configuration. Since Bregan does not disclose or suggest using the claimed restraint mechanism, withdrawal of the rejection is requested. Claim 18 depends from claim 17 and therefore also is allowable.

Regarding claim 19, claim 19 recites “said restraint mechanism releases said fastener when said fastener is pulled from said restraint mechanism.” Bregan releases fastener 50 in a different manner. Pusher member 202 is moved distally relative to tongue 204 “to push” the surgical fastener distally away from tongue 204. As the distal portion 58 of tines 54 are disengaged from tongue 204, they move to the closed position (col. 6, lines 56-58).

Regarding claim 37, claim 37 describes “a restraint mechanism to releasably restrain said plurality of proximal members of said fastener in an open configuration....without restraining said one or more distal members...wherein said restraint mechanism is a generally cylindrical tube.” Applicator 200 (not endoscopic tube 212) pivots the distal portions 58 of tines 54 into an open position (col. 6, lines 47-46). Bregan’s endoscopic tube 212 does not restrain a plurality of proximal members of the fastener in an open configuration. Since Bregan does not disclose or suggest using the claimed restraint mechanism, withdrawal of the rejection is requested. Claim 38 depends from claim 37 and therefore also is allowable.

Regarding claim 39, claim 39 recites “said restraint mechanism releases said fastener when said fastener is pulled from said restraint mechanism.” The arguments applied to claim 19 also apply to claim 39.

Claims 8, 9, 28 and 29:

Claims 8, 9, 28 and 29, were rejected under 35 U.S.C. 103(a) as being unpatentable over Bregan. The Examiner advanced that the relative the number of proximal and distal members

would have been an obvious matter of design choice. However, the Examiner provided no motivation founded in Bregan or other document of record to carry out the modification. Bregan is devoid of any disclosure or suggestion of providing a fastener as set forth in claims 8 and 28 “wherein the number of proximal members is equal to the number of distal members,” let alone how one would modify the Bregan clip to have the claimed proximal and distal members. Accordingly, a prima facie case of unpatentability has not been established and Applicants respectfully request withdrawal of the rejection of claims 8 and 28 and claims 9 and 29 which depend therefrom.

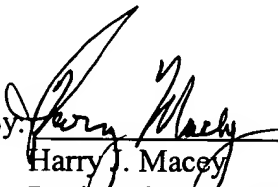
Regarding dependent claims 9 and 29, Bregan also does not disclose or suggest the claimed apparatus “wherein said fastener has a longitudinal orientation having a centerline, and wherein said proximal members and said distal members are approximately symmetric about said centerline.” There is no discussion specifically directed to these claims in the Office Action. Accordingly, Applicants request reconsideration and withdrawal of the rejection of claims 9 and 29.

Applicants respectfully request the issuance of a formal Notice of Allowance at an early date. If a telephone interview would advance prosecution of the application, the Examiner is invited to telephone the undersigned at the number provided below.

In the unlikely event that the transmittal letter is separated from this document and/or the Patent Office determines that an extension and/or other relief is required, Applicants petition for any required relief including extensions of time and authorizes the Commissioner to charge the cost of such petitions and/or other fees due, including additional claims fees, in connection with the filing of this document to Deposit Account No. 50-1947 referencing Attorney Docket No. CSI-2016CP1.

Respectfully submitted,

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